

**Introduced by Senator Wright**

February 27, 2009

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An act to amend Sections 1270, 1270.1, 1272.1, 1275, and 1319 of, *and to add Article 9.5 (commencing with Section 1319.7) to Chapter 1 of Title 10 of Part 2 of*, the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

SB 625, as amended, Wright. Crimes: bail: release on own recognizance.

Existing law requires a defendant who is in custody and is arraigned on a complaint alleging a misdemeanor, including a defendant arrested pursuant to an out-of-county warrant involving only misdemeanors, to be released on his or her own recognizance, unless the court makes a finding on the record that the release will compromise public safety or will not reasonably assure the appearance of the defendant as required.

This bill would require a court, in deciding consistent with specified constitutional provisions whether to make one of these findings, to also consider the defendant's record of appearance at past court hearings or of flight to avoid prosecution, the maximum potential sentence that could be imposed, *and* the ties of the defendant to the community, ~~and if there is a federal immigration hold in place on the defendant.~~

Existing law provides that before any person who has been arrested for a violent felony or certain other crimes is released on bail in an amount other than that specified in the schedule of bail for the offense, or is released on his or her own recognizance, a hearing shall be held at which the court shall consider certain enumerated factors including

any evidence offered by the detained person regarding his or her ties to the community and his or her ability to post bond.

This bill would also require the court, in determining consistent with specified constitutional provisions whether to change the bail or release the detained person, to consider what will reasonably assure the appearance of the detained person as required ~~and if there is a federal immigration hold in place on the detained person.~~

Existing law requires a court to order release of a defendant on bail pending appeal if the defendant demonstrates certain matters, including, by clear and convincing evidence, that the defendant is not likely to flee. For purposes of determining whether the defendant is not likely to flee, existing law requires the court to consider specified criteria.

This bill would also require the court to consider, consistent with specified constitutional provisions, whether bail would provide reasonable assurance of the appearance of the defendant as required ~~and if there is a federal immigration hold in place on the defendant.~~

Existing law requires a judge or magistrate to take specified information, including the seriousness of the offense charged, into consideration when setting, reducing, or denying bail.

This bill would require the court, consistent with specified constitutional provisions, to also consider the maximum potential sentence that could be imposed; *and* the ties of the defendant to the community; ~~and if there is a federal immigration hold in place on the defendant.~~

Existing law provides that a defendant charged with a violent felony shall not be released on his or her own recognizance where it appears, by clear and convincing evidence, that he or she previously has been charged with a felony offense and has willfully and without excuse from the court failed to appear in court as required while that charge was pending. In all other cases, in making a determination as to whether or not to grant release under these provisions, the court is required to consider specified information.

This bill would also require the court to consider, consistent with specified constitutional provisions, whether the release would provide reasonable assurance of the appearance of the defendant as required, the defendant's record of appearance at past court hearings or of flight to avoid prosecution, the maximum potential sentence that could be imposed, *and* the ties of the defendant to the community; ~~and if there is a federal immigration hold in place on the defendant.~~

Because these provisions could result in more jail time for those awaiting trial or appeal, this bill would impose a state-mandated local program.

*Existing law makes the county sheriffs the keepers of the county jails and regulates the keeping of persons in county jails.*

*This bill would require the sheriff, before releasing a person on bail or on his or her own recognizance, to make all reasonable efforts to determine whether or not a hold, detainer, or warrant has been lodged with the jail against that person, thereby imposing a state-mandated local program.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1270 of the Penal Code is amended to  
2 read:  
3 1270. (a) Any person who has been arrested for, or charged  
4 with, an offense other than a capital offense may be released on  
5 his or her own recognizance by a court or magistrate who could  
6 release a defendant from custody upon the defendant giving bail,  
7 including a defendant arrested upon an out-of-county warrant. A  
8 defendant who is in custody and is arraigned on a complaint  
9 alleging an offense which is a misdemeanor, and a defendant who  
10 appears before a court or magistrate upon an out-of-county warrant  
11 arising out of a case involving only misdemeanors, shall be entitled  
12 to an own recognizance release unless the court makes a finding  
13 on the record, in accordance with Section 1275, that an own  
14 recognizance release will compromise public safety or will not  
15 reasonably assure the appearance of the defendant as required. In  
16 deciding whether to make one of these findings, the court shall  
17 consider, consistent with Section 12 of Article I of the California  
18 Constitution, the defendant's record of appearance at past court

1 hearings or of flight to avoid prosecution, the maximum potential  
2 sentence that could be imposed, *and* the ties of the defendant to  
3 the community, ~~and if there is a federal immigration hold in place~~  
4 ~~on the defendant~~, but public safety shall be the primary  
5 consideration. If the court makes one of those findings, the court  
6 shall then set bail and specify the conditions, if any, whereunder  
7 the defendant shall be released.

8 (b) Article 9 (commencing with Section 1318) shall apply to  
9 any person who is released pursuant to this section.

10 SEC. 2. Section 1270.1 of the Penal Code is amended to read:

11 1270.1. (a) Before any person who is arrested for any of the  
12 following crimes may be released on bail in an amount that is  
13 either more or less than the amount contained in the schedule of  
14 bail for the offense, or may be released on his or her own  
15 recognizance, a hearing shall be held in open court before the  
16 magistrate or judge:

17 (1) A serious felony, as defined in subdivision (c) of Section  
18 1192.7, or a violent felony, as defined in subdivision (c) of Section  
19 667.5, but not including a violation of subdivision (a) of Section  
20 460 (residential burglary).

21 (2) A violation of Section 136.1 where punishment is imposed  
22 pursuant to subdivision (c) of Section 136.1, *or Section 262, 273.5,*  
23 *422* where the offense is punished as a felony, or 646.9.

24 (3) A violation of paragraph (1) of subdivision (e) of Section  
25 243.

26 (4) A violation of Section 273.6 if the detained person made  
27 threats to kill or harm, has engaged in violence against, or has gone  
28 to the residence or workplace of, the protected party.

29 (b) The prosecuting attorney and defense attorney shall be given  
30 a two-court-day written notice and an opportunity to be heard on  
31 the matter. If the detained person does not have counsel, the court  
32 shall appoint counsel for purposes of this section only. The hearing  
33 required by this section shall be held within the time period  
34 prescribed in Section 825.

35 (c) At the hearing, the court shall consider evidence of past court  
36 appearances of the detained person, the maximum potential  
37 sentence that could be imposed, and the danger that may be posed  
38 to other persons if the detained person is released. In making the  
39 determination whether to release the detained person on his or her  
40 own recognizance, the court shall consider the potential danger to

1 other persons, including threats that have been made by the  
2 detained person and any past acts of violence. The court shall also  
3 consider, consistent with Section 12 of Article I of the California  
4 Constitution, what will reasonably assure the appearance of the  
5 detained person as required, ~~and if there is a federal immigration~~  
6 ~~hold in place on the detained person~~, and any evidence offered by  
7 the detained person regarding his or her ties to the community and  
8 his or her ability to post bond.

9 (d) If the judge or magistrate sets the bail in an amount that is  
10 either more or less than the amount contained in the schedule of  
11 bail for the offense, the judge or magistrate shall state the reasons  
12 for that decision and shall address the issue of threats made against  
13 the victim or witness, if they were made, in the record. This  
14 statement shall be included in the record.

15 SEC. 3. Section 1272.1 of the Penal Code is amended to read:

16 1272.1. Release on bail pending appeal under subdivision (3)  
17 of Section 1272 shall be ordered by the court if the defendant  
18 demonstrates all the following:

19 (a) By clear and convincing evidence, the defendant is not likely  
20 to flee. Under this subdivision the court shall, consistent with  
21 Section 12 of Article I of the California Constitution, consider the  
22 following criteria:

23 (1) The ties of the defendant to the community, including his  
24 or her employment, the duration of his or her residence, the  
25 defendant's family attachments and his or her property holdings.

26 (2) The defendant's record of appearance at past court hearings  
27 or of flight to avoid prosecution.

28 (3) The severity of the sentence the defendant faces.

29 ~~(4) If there is a federal immigration hold in place on the~~  
30 ~~defendant.~~

31 ~~(5)~~

32 (4) Whether bail would provide reasonable assurance of the  
33 appearance of the defendant as required.

34 (b) By clear and convincing evidence, the defendant does not  
35 pose a danger to the safety of any other person or to the community.

36 Under this subdivision the court shall consider, among other  
37 factors, whether the crime for which the defendant was convicted  
38 is a violent felony, as defined in subdivision (c) of Section 667.5.

1 (c) The appeal is not for the purpose of delay and, based upon  
2 the record in the case, raises a substantial legal question which, if  
3 decided in favor of the defendant, is likely to result in reversal.

4 For purposes of this subdivision, a “substantial legal question”  
5 means a close question, one of more substance than would be  
6 necessary to a finding that it was not frivolous. In assessing whether  
7 a substantial legal question has been raised on appeal by the  
8 defendant, the court shall not be required to determine whether it  
9 committed error.

10 In making its decision on whether to grant defendants’ motions  
11 for bail under subdivision (3) of Section 1272, the court shall  
12 include a brief statement of reasons in support of an order granting  
13 or denying a motion for bail on appeal. The statement need only  
14 include the basis for the order with sufficient specificity to permit  
15 meaningful review.

16 SEC. 4. Section 1275 of the Penal Code is amended to read:

17 1275. (a) In setting, reducing, or denying bail, the judge or  
18 magistrate shall take into consideration, consistent with Section  
19 12 of Article I of the California Constitution, the protection of the  
20 public, the seriousness of the offense charged, including the  
21 maximum potential sentence that could be imposed, the previous  
22 criminal record of the defendant, the ties of the defendant to the  
23 community, ~~if there is a federal immigration hold in place on the~~  
24 ~~defendant~~, and the probability of his or her appearing at trial or  
25 hearing of the case. The public safety shall be the primary  
26 consideration.

27 In considering the seriousness of the offense charged, the judge  
28 or magistrate shall include consideration of the alleged injury to  
29 the victim, and alleged threats to the victim or a witness to the  
30 crime charged, the alleged use of a firearm or other deadly weapon  
31 in the commission of the crime charged, and the alleged use or  
32 possession of controlled substances by the defendant.

33 (b) In considering offenses wherein a violation of Chapter 6  
34 (commencing with Section 11350) of Division 10 of the Health  
35 and Safety Code is alleged, the judge or magistrate shall consider  
36 the following: (1) the alleged amounts of controlled substances  
37 involved in the commission of the offense, and (2) whether the  
38 defendant is currently released on bail for an alleged violation of  
39 Chapter 6 (commencing with Section 11350) of Division 10 of the  
40 Health and Safety Code.

(c) Before a court reduces bail below the amount established by the bail schedule approved for the county, in accordance with subdivisions (b) and (c) of Section 1269b, for a person charged with a serious felony, as defined in subdivision (c) of Section 1192.7, or a violent felony, as defined in subdivision (c) of Section 667.5, the court shall make a finding of unusual circumstances and shall set forth those facts on the record. For purposes of this subdivision, “unusual circumstances” does not include the fact that the defendant has made all prior court appearances or has not committed any new offenses.

SEC. 5. Section 1319 of the Penal Code is amended to read:

1319. (a) No person arrested for a violent felony, as described in subdivision (c) of Section 667.5, may be released on his or her own recognizance until a hearing is held in open court before the magistrate or judge, and until the prosecuting attorney is given notice and a reasonable opportunity to be heard on the matter. In all cases, these provisions shall be implemented in a manner consistent with the defendant’s right to be taken before a magistrate or judge without unreasonable delay pursuant to Section 825.

(b) A defendant charged with a violent felony, as described in subdivision (c) of Section 667.5, shall not be released on his or her own recognizance where it appears, by clear and convincing evidence, that he or she previously has been charged with a felony offense and has willfully and without excuse from the court failed to appear in court as required while that charge was pending. In all other cases, in making the determination as to whether or not to grant release under this section, the court shall, consistent with Section 12 of Article I of the California Constitution, consider all of the following:

(1) The existence of any outstanding felony warrants on the defendant.

(2) Any other information presented in the report prepared pursuant to Section 1318.1. The fact that the court has not received the report required by Section 1318.1, at the time of the hearing to decide whether to release the defendant on his or her own recognizance, shall not preclude that release.

(3) The defendant’s record of appearance at past court hearings or of flight to avoid prosecution.

(4) The maximum potential sentence that could be imposed.

(5) The ties of the defendant to the community.

(7)

~~(8)~~

(c) The judge or magistrate who, pursuant to this section, grants or denies release on a person's own recognizance, within the time period prescribed in Section 825, shall state the reasons for that decision in the record. This statement shall be included in the court's minutes. The report prepared by the investigative staff pursuant to subdivision (b) of Section 1318.1 shall be placed in the court file for that particular matter.

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